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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-465**

13 **REBECCA J. ASHBURN-CLARK,**
14 **aka REBECCA JEAN ASHBURN,**
aka REBECCA J. ASHBURN,
15 **aka REBECCA JEAN CLARK**
4865 Mount Durban Drive
San Diego, CA 92117

A C C U S A T I O N

16 Registered Nurse License No. 423193

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about April 30, 1998, the Board of Registered Nursing issued Registered Nurse
25 License Number 423193 to Rebecca J. Ashburn-Clark (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on September 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), an expired license may be renewed at any time within eight years after expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states in pertinent part:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states in pertinent part:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
8 'registration.'"

9 9. Section 2761 of the Code states in pertinent part:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the following:

13 "....

14 (f) Conviction of a felony or of any offense substantially related to the qualifications,
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be
16 conclusive evidence thereof."

17 "...."

18 10. Section 2762 of the Code states in pertinent part:

19 "In addition to other acts constituting unprofessional conduct within the meaning of this
20 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
21 following:

22 "....

23 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
24 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
25 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
26 himself or herself, any other person, or the public or to the extent that such use impairs his or her
27 ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

REGULATIONS

11. California Code of Regulations, title 16, section 1444, states in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

12. California Code of Regulations, title 16, section 1445 states in pertinent part:

“ . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

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1 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
2 Penal Code.

3 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

4 **COST RECOVERY**

5 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(April 28, 2009 Conviction for DUI on January 8, 2009)**

11 14. Respondent is subject to disciplinary action under Code sections 490 and 2761,
12 subdivision (f), in that on April 28, 2009, in the Superior Court, County of San Diego, in the case
13 entitled *The People of the State of California v. Rebecca Jean Clark*, case number M071117,
14 Respondent was convicted by her guilty plea to violating Vehicle Code section 23152,
15 subdivision (a), driving under the influence of alcohol, a misdemeanor, a crime substantially
16 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
17 follows:

18 a. On January 8, 2009, a San Diego Police officer responded to an all units dispatch and
19 drove to the 4800 block of Mt. Durban Drive in San Diego. This dispatch described a report by
20 the listed security guard at 4800 block of Mt. Durban Drive. The security guard had called the
21 police about two women who had been in an alcohol related disturbance. The officer was at this
22 address approximately one minute before he saw the described vehicle slowly approach west
23 bound, and signal as if to enter the driveway of 4865 Mt. Durban Drive. The officer then saw the
24 garage door open. To keep this vehicle from entering the driveway and then the open garage, the
25 officer pulled forward and stopped in front of the driveway blocking it. The vehicle then pulled
26 west bound and stopped in front of the house. The right wheels were over two feet from the curb.
27 The officer exited his vehicle and spoke to the driver. She opened the door and the officer
28 immediately smelled the strong and distinct odor of an alcoholic beverage on or about her person.

1 Without asking her to exit her car, Respondent exited and swayed distinctly as if she was about to
2 fall down. The officer asked her to walk around to the right side away from the roadway. She
3 staggered as she walked and then she leaned against the right rear trunk of her car for support
4 while she spoke to the officer. The officer administered a Field Sobriety Test (FST). As first she
5 said she would do a FST and then she said she wanted a lawyer first. The officer asked
6 Respondent if she was willing to do a FST again and she did not reply. The officer then placed
7 Respondent in handcuffs. While enroute downtown Respondent began to bang her forehead
8 repeatedly against the plexi-glass in front of her in the officer's police car. She screamed and
9 swore loudly. When they arrived at headquarters, Respondent refused to blow into the
10 intoxilyzer. The officer sat her down in a chair and secured her for a blood draw. Respondent
11 kept getting up from the seat and repeatedly banged her fists on the adjacent wall. She also
12 punched herself repeatedly in the face with her hands. The officer then applied a wrist lock to her
13 unsecured right wrist to make her sit down on the chair and stop punching the wall and herself.
14 This was very effective and brought her under control. She then refused to allow the blood tech
15 to take blood from her right arm. The officer then took her outside to the forced blood chair and
16 secured her for a blood draw. The officer advised her of the chemical test admonition and the
17 blood tech was then able to complete the blood draw. When the officer released the cuff from the
18 wall to re-cuff both of Respondent's hands behind her back, she attempted to run past the officer
19 out the door of the forced blood room. The officer grabbed her arm and turned her back into the
20 chair she had been sitting in. The forced blood draw was then completed. Respondent was then
21 transported to Las Colinas jail. The January 15, 2009, San Diego Police Forensic Science Section
22 Alcohol Analysis Report finds that the blood alcohol count for Respondent was .26%.

23 SECOND CAUSE FOR DISCIPLINE

24 (Using Alcohol to an Extent Dangerous to Self and Others)

25 15. Respondent's license is subject to discipline under Code section 2762,
26 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as
27 set forth in paragraph 14 above, which is incorporated here by this reference.

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1 consumption of alcohol as set forth in paragraph 14 above, which is incorporated here by this
2 reference.

3 PRAYER

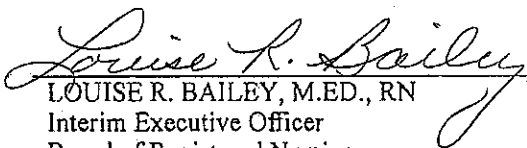
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 423193, issued to
7 Rebecca J. Ashburn-Clark;

8 2. Ordering Rebecca J. Ashburn-Clark to pay the Board of Registered Nursing the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

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13 DATED: 3/25/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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